IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 7TH MARCH 2007 / 16TH PHALGUNA 1928

WP(C).No. 24202 of 2003(F)

PETITIONER:

MARIAMMA ABRAHAM,
D/O. LATE ABRAHAM KOZHIMALA, SWEEPER,
VILLAGE OFFICE, THANKAMANI, THANKAMANI P.O.,
UDUMBANCHOLA, IDUKKI DIST.

BY ADV. SRI.K.JAJU BABU
SMT.M.U.VIJAYALAKSHMI

RESPONDENTS:

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1. STATE OF KERALA,
REP. BY COMMISSIONER FOR LAND REVENUE,
REVENUE DEPARTMENT, GOVT.SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE COMMISSIONER OF LAND REVENUE,
THIRUVANANTHAPURAM.

3. THE DISTRICT COLLECTOR, IDUKKI.

BY GOVERNMENT PLEADER SRI. P.A.SALIM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/03/2007, THE COURT ON 07/03/2007 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF LETTER DATED 23.1.2001 VIDE NO.A2.35888/99 ISSUED BY THE 3RD RESPONDENT.

EXT.P2: COPY OF THE REPLY DATED 2.2.2001 VIDE NO.25/2001 SUBMITTED BY THE VILLAGE OFFICER, THANKAMONY TO THE TAHSILDAR, UDUMBANCHOLA.

EXT.P3: COPY OF THE REPLY DATED 18.6.2002 VIDE NO.A2.35888/99 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.

EXT.P4: COPY OF THE ORDER DATED 10.10.2002 VIDE NO.A1.996/84 ISSUED BY THE ASSISTANT EXECUTIVE ENGINEER, DISTRICT PANCHAYATH SUB DIVISION, KOLLAM.

EXT.P5: COPY OF THE REPRESENTATION DATED 11.11.2002 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT.

EXT.P6: COPY OF THE JUDGMENT DATED 10.12.2002 IN O.P.NO.36746/2002, BY THIS HON'BLE COURT.

EXT.P7: COPY OF LETTER DATED 1.7.2003 VIDE NO.76729/T1/02/RD ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

EXT.P8: COPY OF STATEMENT REGARDING ARREARS DUE TO THE PETITIONER AS PER RELEVANT GOVERNMENT ORDERS.

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BKN //TRUE COPY//

P.A. TO JUDGE.

T.R.RAMACHANDRAN NAIR, J.

W.P.(C).NO.24202 OF 2003

Dated this the 7th day of March,2007.

J U D G M E N T

The petitioner was appointed as a part time sweeper in the village office, Thankamani, on 1.11.1986. She was offered appointment on compassionate basis consequent to the death of her father Abraham Kozhimala, in the police firing in Thankamani on 22.10.1986. The case of the petitioner is that she is entitled for regularisation in the light of Ext.P4 order passed by the Government, in respect of Smt. P.Ammini Amma who happened to be appointed in the year 1988.

2. Petitioner approached this court by filing W.P(C).No. 36746/2002, which was disposed of on 10.12.2002, in the following terms.

> "3. In the circumstances, this Original Petition is disposed of directing the 1st respondent to consider Ext.P5 in the light of Ext.P4 and other relevant Government Orders on the subject and take a decision within two months from the date of receipt of a copy of this judgment."

3. Ext.P7 is the order passed by the Government pursuant to the direction in Ext.P6 judgment. The only reason stated in Ext.P7 is that,

> "The existing rules do not permit Government to regularise the service of casual sweepers and hence your request for regularisation and other benefits entitled to the regular employees cannot be allowed."

4. Counsel for the petitioner Sri. Jaju Babu strongly contended that Government was failed to apply their mind to the direction of this court in Ext.P6 judgment, while passing Ext.P7 order. There is a specific direction in EXt.P6 to consider Ext.P5 representation in the light of Ext.P4 and other relevant Government Orders on the subject. A reading of Ext.P7 shows that there is no consideration of Ext.P4 or any other relevant Government Orders. Apparently, in Ext.P7, the claim raised by the petitioner is not properly considered in compliance with the directions in Ext.P6 judgment. When the petitioner was relying upon Ext.P4 to sustain her claim it was incumbent on the Government to consider her claim with reference to the said order. Going by the averments in the Writ Petition, the person who is beneficiary of Ext.P4 is seen engaged as a casual sweeper from 1.3.1988, after the petitioner was engaged.

5. When this court in Ext.P6 judgment specifically directed the Government to consider Ext.P5 representation produced in that O.P, in the light of Ext.P4 and other relevant orders, the Government was bound to pass orders after considering the merits of the case in the light of Ext.P4. The Government could not side line the issue by a one line order as done now.

There is total non-application of mind while passing ExtP7 order. Therefore I quash Ext.P7 order and direct the first respondent to pass orders afresh on the representation filed by the petitioner in the light of Ext.P4 order passed by the Government and other relevant Government Orders on the subject and in compliance with the direction contained in Ext.P6 judgment, within a period of three months from the date of receipt of a copy of this judgment. In the circumstances of the case, parties are directed to suffer their costs.

(T.R.RAMACHANDRAN NAIR)
JUDGE.

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